

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

-v.-

ELIOT SPITZER, in his official capacity as  
Governor of the State of New York,

ANDREW CUOMO, in his official capacity as

Attorney General of the State of New York,

MICHAEL HOGAN, in his official capacity

as Commissioner of the New York State Office

of Mental Health, DIANA JONES RITTER, in her

official capacity as Commissioner of the New York

State Office of Mental Retardation and

Developmental Disabilities, and BRIAN FISCHER,

in his official capacity as Commissioner of the New

York State Department of Corrections Services,

Defendants.

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MOTION FOR PRELIMINARY  
INJUNCTIVE RELIEF AND  
TEMPORARY RESTRAINING  
ORDER

Docket No. 07-CV-2935 (GEL)

PLEASE TAKE NOTICE that upon the complaint dated April 12, 2007 and the accompanying memorandum of law, the undersigned will move this Court, on a date to be determined by this Court, at the Courthouse located at 500 Pearl Street, New York, New York, 10007, for a preliminary injunction enjoining Defendants from enforcing certain provisions of New York's "sex offender management and treatment act," which took effect on April 13, 2007. Specifically, Plaintiff seeks to enjoin the operation of: (1) the use of "securing petitions" under N.Y. Mental Hygiene Law ("MHL") § 10.06 (f) to detain offenders beyond the completion of their term of imprisonment, without notice or opportunity for review; (2) MHL § 10.06 (j) (iii) (providing that the commission of a sex offense is "deemed established" and cannot be litigated at a probable

cause hearing where the alleged offender has never been convicted of a crime and was found incompetent to stand trial); (3) that portion of MHL § 10.07 (d) which provides that as to persons found incompetent to stand trial and never convicted of any offense, civil commitment can be predicated on a showing *by clear and convincing evidence* (not beyond a reasonable doubt) that they committed the criminal conduct; (4) the final sentence of MHL § 10.07 (c), providing for the retroactive determination that certain non-sex crimes were committed with a “sexual motivation;” (5) MHL § 10.06 (k), which permits involuntary civil detention pending trial based on mental abnormality alone, without a finding of current dangerousness; (6) new Mental Hygiene Law § 10.05 (e), which permits the involuntary psychiatric examination of Plaintiffs’ constituents in the absence of counsel; and (7) MHL § 33.13 (c) (9) (vii), which permits the release of confidential clinical and medical records.

A temporary restraining order is requested pending a final determination on the preliminary injunction motion. A hearing on the motion is also requested.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 6.1(b) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, answering memoranda, if any, shall be served by April 30, 2007.

Dated: April 16, 2007  
New York, New York

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